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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/145637

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 15, 2013, at Milwaukee, Wisconsin.

This case is related to case MDD/147120.

The issue for determination is whether the Milwaukee Enrollment Service Center (the agency) correctly terminated Petitioner's Medicaid benefits, effective December 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Brian Townsend
8229 W Burleigh Street
Milwaukee, WI 53222

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Katherine May, HSPC
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 14, 2012, Petitioner submitted applications for Medicaid benefits under both a presumptive disability and regular Medicaid. Petitioner alleged that he was disabled by spinal stenosis. (DDB file)
3. Petitioner was approved for Medicaid benefits under a presumptive disability. (Exhibits 2 and 4)

4. On April 11, 2012, Petitioner applied for Social Security Disability Income (SSDI) Benefits. Petitioner alleged that he was disabled due to “C4-C7 cervical stenosis; neuroforaminal stenosis; L1 vertebrate compression fracture; spondylosis of the cervical spine; cervical lordosis upper cervical spine; osperphypes [sic] present at multiple levels; left and right hand issues; numbness in hands; depression. (DDB file)
5. On September 27, 2012, the Social Security Administration (SSA) denied Petitioner’s application for SSDI. (DDB file)
6. On October 2, 2102, the DDB denied Petitioner’s application for regular Medicaid benefits, finding him to be not disabled for Medicaid purposes. (DDB file)
7. On October 23, 2012, Milwaukee Enrollment Services sent Petitioner a notice indicating that his healthcare benefits would be ending effective December 1, 2012, because he is neither elderly, blind, nor disabled. (Exhibit 4)
8. On November 10, 2012, Petitioner filed for reconsideration of the DDB’s determination. On an unspecified date, Petitioner also filed for reconsideration of the SSA’s determination regarding SSDI benefits. (DDB file)
9. On November 30, 2012, Petitioner filed a request for fair hearing to contest the termination of his health care benefits. (Exhibit 1)
10. On January 25, 2013, the SSA again found Petitioner to be not disabled for SSDI purposes and denied Petitioner’s application. (DDB file)
11. On January 29, 2013, the DDB also upheld its finding that Petitioner is not disabled for Medicaid purposes. On February 4, 2013, the DDB forwarded Petitioner’s file to the Division of Hearings and Appeals for review. (DDB file)
12. Petitioner was admitted to the hospital on January 14, 2013, and remained there until February 2, 2013. During this hospitalization, doctors placed a morphine pump to address Petitioner’s chronic pain issues. This information was not considered by either the DDB or the SSA. (Testimony of Petitioner; Exhibit 10; DDB file)
13. Petitioner was most recently admitted to the hospital on April 25, 2013, where he remained until May 5, 2013, because of complications related to the placement of the morphine pump. Specifically, Petitioner was treated for nausea, vomiting, constipation and severe weight loss and malnutrition. (Testimony of Petitioner; Exhibit 12)

DISCUSSION

Persons between 18 and 65 who are not pregnant and have no children under 19 living with them are generally ineligible for regular medical assistance benefits unless they are disabled. Wis. Stat. §§ 49.46(1) and 49.47(4). However, under state and federal regulations, an individual can qualify for Medicaid benefits under a presumptive disability. *Medicaid Eligibility Handbook (MEH) §5.9.1*; see also *Wis. Adm. Code § DHS 103.03(1)(e)*.

Presumptive disability is a method for temporarily determining a disability for an individual while a formal disability determination is being made by the Disability Determination Board (DDB). Presumptive Disability is determined either by the DDB, or in some circumstances, by an income maintenance worker. The regular disability application process must still be completed for persons with a presumptive disability. A presumptive disability decision stands until the DDB makes its final disability determination.

The DDB did make a final determination on October 2, 2012, that Petitioner was not disabled at that time. Consequently, the agency correctly terminated Petitioner’s Medicaid benefits, effective December 1, 2012.

It should be noted, however, that Petitioner’s disability was the subject of a hearing in case MDD/147120 which resulted in Petitioner being found to be disabled as of April 2013, because his condition deteriorated

since the January 2013 findings upon reconsideration that Petitioner was not disabled, which were based upon medical records dated December 2012 and prior. As such, it was ordered in case MDD/147120 that the county agency certify Petitioner for Medicaid with an April 1, 2013 onset date, if he is otherwise eligible for such benefits.

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner's Medicaid Benefits effective December 1, 2012.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

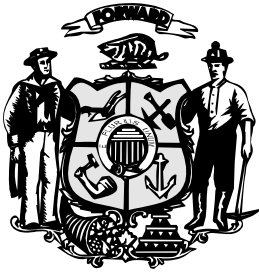
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of June, 2013.

 \sMayumi M. Ishii
 Administrative Law Judge
 Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 17, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
pdl@legalaction.org